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## 1996 Decisions

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Opinions of the United  
States Court of Appeals  
for the Third Circuit

7-31-1996

## Sani-Dairy v. Sec Agri

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 95-3304

SANI-DAIRY, a division of Penn Traffic Co., Inc.;  
JOHN P. STRITTMATTER, d/b/a Strittmatters Dairy;  
DELBERT THOMAS; ED THOMAS; LOWELL FRIEDLIN;  
ARTHUR BLOOM; JAMES L. HARTEIS

v.

CLAYTON YEUTTER, Secretary of Agriculture, United  
States Department of Agriculture; COMMISSIONER OF  
AGRICULTURE AND MARKETS, STATE OF NEW YORK

(D.C. Civil No. 90-cv-00222)

MILK MARKETING, INC.

v.

CLAYTON YEUTTER, Secretary of Agriculture,  
United States Department of Agriculture

(D.C. Civil No. 90-cv-00236)

CLAYTON YEUTTER, Secretary of Agriculture,  
United States Department of Agriculture;  
DAN GLICKMAN, Secretary of Agriculture,  
United States Department of Agriculture  
and UNITED STATES OF AMERICA,\*  
Appellants  
(\*Pursuant to Rule 12(a), F.R.A.P.)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Submitted under Third Circuit LAR 34.1(a) on March 15, 1996

Before: NYGAARD, SAROKIN and ALDISERT, Circuit Judges.

(Opinion Filed: July 31, 1996)

Marvin Beshore  
Milspaw & Beshore  
130 Locust Street  
P.O. Box 946  
Harrisburg, PA 17108-0946

Attorney for Appellees  
SANI-DAIRY, a division of  
Penn Traffic Co., Inc.,  
JOHN P. STRITTMATTER, dba  
Strittmatters Dairy,  
DELBERT THOMAS, ED THOMAS,  
LOWELL FRIEDLIN, ARTHUR  
BLOOM, JAMES L. HARTEIS

Glen W. Wagner  
3858 North Cliff Road  
Port Clinton, OH 43452

Attorney for Appellee  
MILK MARKETING, INC.

Edward R. Cohen  
United States Department  
of Justice  
10th & Constitution  
Avenue, N.W.  
Washington, DC 20530

Attorney for Appellants

#### OPINION OF THE COURT

PER CURIAM.

Several Pennsylvania dairy farmers and a dairy cooperative challenge the validity of the Secretary of Agriculture's regulations governing the marketing of fluid milk in the New York-New Jersey milk marketing area. Plaintiffs allege that the Secretary's regulations, promulgated under the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. § 601 et seq., violate 7 U.S.C. § 608c(5)(G), which states:  
No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

The district court found that the Secretary's regulations

governing the marketing of fluid milk in the New York-New Jersey milk marketing area, as applied to plaintiffs, constituted a prohibited economic trade barrier to milk producers and sellers outside the New York-New Jersey milk marketing area. See *Lehigh Valley Cooperative Farmers, Inc. v. United States*, 370 U.S. 76, 91-98, 82 S.Ct. 1168, 1175-1180 (1962). The district court awarded plaintiffs restitution and interest. We will now affirm, and in so doing adopt the reasoning of the district court expressed in *Sani-Dairy v. Yeutter*, F.Supp. , No. CIV.A.90-222J, 1995 WL 848950 (W.D. Pa. Mar. 27, 1995) and *Sani-Dairy v. Espy*, F.Supp. , NO. CIV.A. 90-222J, CIV.A. 90-236J, 1993 WL 832147 (W.D. Pa. Dec. 30, 1993).